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COMMITTEE AGAINST TORTURE

Eighth session

SUMMARY RECORD OF THE 116th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 5 May 1992, at 3 p.m.

Chairman: Mr. VOYAME

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The meeting was called to order at 3.05 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5)

Exchange of views on the question of a draft optional protocol to the Convention (continued) (E/CN.4/1991/66; CAT/C/SR.80)

1. At the request of the Chairman, Mr. BRUNI (Secretary of the Committee) read out the text of the following "Dissertation", which had been prepared by Mr. Sorensen in response to the request made by the Chairman at the end of the 114th meeting:

"In order to secure the most efficient way of performing the work both in the Committee against Torture and in the proposed subcommittee, the difference in working methods ought to be taken into consideration as comprehensively as possible, recognizing the desirability of enacting the draft optional protocol.

The Committee against Torture examines the States parties' reports according to article 19 of the Convention in public meetings and thereby contributes to creating a general awareness about torture.

The subcommittee works in camera (in private meetings). The whole idea of the subcommittee is based on cooperation and confidentiality. The subcommittee is part of an ongoing - confidential if the State so wishes - dialogue with the State.

If the Committee is in possession of the confidential knowledge appearing in the subcommittee's report, it will not be able to hold a fair and public discussion with the State. The State could claim that it will stop the negotiations with the subcommittee because the Committee has broken confidentiality.

Hence the following proposal:

Article 15, paragraph 1, of the optional protocol should read as follows:

The subcommittee shall submit to the Committee only the following kinds of reports:

(a) All reports which the State party in question wishes to be published;

(b) Any report on which the subcommittee wishes the Committee to make a public statement;

(c) All reports which, in the subcommittee's opinion, reveal that systematic torture has been conducted by a State party;

(d) Reports on a State party where the Committee has indicated to the subcommittee that an investigation in accordance with article 20 of the Convention against Torture is considered.

The reports under (b), (c) and (d) shall be dealt with by the Committee in private meetings.

Optional protocol, article 15, paragraph 2:

After the words 'its activities', add 'including a list of all countries visited, the composition of the visiting delegation and the places visited'."

2. The CHAIRMAN said he assumed that the translation of the dissertation by the interpreters had enabled all members of the Committee to take cognizance of it. The text fell into three parts, first, the recognition of the desirability of adopting the draft optional protocol, on which he assumed all Committee members were agreed, and then the two proposals concerning article 15 of the optional protocol. The dissertation also indicated the differences between the working methods of the subcommittee and the Committee against Torture, from which Mr. Sorensen had drawn conclusions.

3. Mr. BURNS said that the crux of the disagreement between himself and Mr. Sorensen at the previous afternoon's meeting had been the nature of the information flow between the subcommittee and the Committee, in a situation where the subcommittee possessed information of relevance to a particular State that was to be the subject of an inquiry by the Committee in accordance with article 20 of the Convention. No provision had been made for the subcommittee to transmit such information. In his view, Mr. Sorensen's dissertation was a satisfactory compromise and took care of his main concerns. It would allow information to be transmitted to the Committee if it was dealing with well-founded allegations of the systematic practice of torture. The subcommittee would be responsible for filtering information to the Committee, which in turn would have to respect confidentiality, as required by article 20, paragraph 5, of the Convention. He was prepared to concede that the subcommittee did not need to transmit to the Committee every report it prepared, but it should transmit a list of its reports and of the investigations it had undertaken. He was still somewhat concerned that the subcommittee was not totally answerable to the Committee, although in the interests of compromise he was prepared to accept that shortcoming.

4. The CHAIRMAN welcomed the constructive compromise that had been achieved. He felt that the wording of the fourth paragraph of the dissertation was perhaps too strong. Rather than saying that the Committee "will not be able to hold a fair and public discussion with the State", it would be preferable to say that it "might not be able to hold a fair and public discussion". That situation could also arise in connection with article 20 of the Convention. It was perfectly possible for the Committee to undertake a confidential inquiry under article 20 concerning a State that was due to submit its report under article 19. In such circumstances, when considering the report, the Committee was required to respect the confidentiality of any information it might have obtained under article 20.

5. With regard to Mr. Sorensen's suggested revision of article 15, paragraph 1, he agreed with restrictions on the kind of report that the subcommittee should submit to the Committee, but he was by no means certain that the proper place for such a provision was in article 15. He suggested

that the Committee should content itself with making its recommendations, without specifying in which article they should be incorporated, as that might give rise to contradictions with other articles of the draft optional protocol, whose final form would be determined by the drafting committee.

6. Mr. SORENSEN said that he was dissatisfied with the present wording of article 15, paragraph 1, and in particular its reference to "the reports and recommendations which may be submitted to it by the Sub-Committee". If it was left in that form, it would render inoperative his suggestion on which reports should be submitted by the subcommittee to the Committee. For that reason, he would prefer the present article 15, paragraph 1, to be replaced by his suggested wording.

7. The CHAIRMAN said he took Mr. Sorensen's point, and appreciated that it might be necessary to amend or even replace the present article 15, paragraph 1. He agreed with the restriction on the kinds of reports that should be submitted by the subcommittee to the Committee. However, at the current stage, the Committee should limit itself to expressing its concerns and leave it to the drafting committee to decide in which specific article they should be reflected, as well as any other amendments that might be required. However, he felt that Mr. Sorensen's proposed amendment to article 15, paragraph 2, could be left as it stood; it seemed perfectly apposite and it was difficult to see in which other article it might be included.

8. Mr. EL-IBRASHI said he wished to make a number of observations on articles 8 and 9 of the draft optional protocol. He had already drawn attention to a shortcoming in article 8, which provided for the subcommittee to establish a programme of regular missions to each of the States parties and for such missions to be postponed if the State party had agreed to a visit to its territory by the Committee against Torture pursuant to article 20, paragraph 3, of the Convention. However, as it stood, the article did not specify for how long missions might be postponed. As Mr. Burns had already pointed out, the postponement would depend on the outcome of the visit by the Committee pursuant to article 20, and on the report on that visit. He felt that a third paragraph was required to make that point clear and to indicate that the subcommittee's visit could not be postponed indefinitely.

9. With regard to article 9, paragraph 1, he felt that the word "may" in the second sentence should be replaced by "shall". Consultation between the subcommittee and the organs established under a regional convention was vital, and the article should not suggest that it was merely optional. If, in accordance with article 9, paragraph 1, the subcommittee coordinated its activities with those of the regional organ, but did not make use of the possibility for one of its members to participate as an observer in missions carried out under the regional convention, then the subcommittee's visit would in a manner of speaking duplicate that of the regional organ, and there was a danger that the reports of the two bodies might be contradictory. Accordingly, if the two bodies did not agree to make a single visit, for the purposes of coordination the report on the visit by the regional organ should be submitted to the subcommittee so as to enable it to acquaint itself with the regional organ's findings and to avoid contradiction or repetition.

10. Mr. BURNS said that the points raised by the previous speaker were significant. The Committee was not a drafting body, but it should advise the Economic and Social Council about its concerns relating to the text in question. The issue was again one of confidentiality and the relationship, in that regard, between the two bodies; he felt that the wording could be amended broadly along the lines proposed by the previous speaker, although the term "postpone" caused him no difficulty. He supported the intentions reflected in articles 8 and 9, and suggested that any further drafting points should be referred to the Council.

11. Mr. SORENSEN said he saw no need to specify any time-limit for postponement; such matters could be left to the subcommittee's discretion. To render the text more specific would be to risk making its application too rigid.

12. Mr. EL-IBRASHI said he agreed with the two previous speakers. Nevertheless, the postponement of a mission was a matter of substance, and not merely timing, and therefore should not simply be discretionary. He would not insist on a textual amendment, but he was nevertheless concerned about a possible loophole.

13. Mr. DIPANDA MOUELLE supported the previous speaker's observations. Perhaps a third paragraph could be added to article 8, to the effect that the subcommittee's mission would not take place until the Committee against Torture had reported on its visit pursuant to article 20 of the Convention.

14. Mr. SORENSEN said that he withdrew his earlier reservation, and could support action to draw the Council's attention to the need for clarification of the text.

15. Mr. BURNS supported the previous speaker.

16. The CHAIRMAN said his own view was that the text of article 8, paragraph 2, was satisfactory as it stood, since the subcommittee could exercise its discretion in the light of a report on the Committee's visit.

17. Mr. LORENZO said he saw no problem with the text as it stood. Article 8, paragraph 2, outlined a simple procedure to avoid action by two United Nations bodies at the same time.

18. Mr. EL-IBRASHI considered that, if there was any doubt about whether a visit by the Committee would be automatically reported to the subcommittee, the text of article 8, paragraph 2, should be clarified.

19. Mr. SORENSEN said that the Committee would in all cases report its activities to the subcommittee; it was the question whether the reverse procedure applied that posed a problem.

20. Mr. LORENZO said it seemed to him that the contrary would apply under the optional protocol as drafted: the subcommittee could provide the Committee against Torture with information where necessary, but not the reverse; otherwise, the optional protocol would be tantamount to a mere amendment of

the Convention. The question of hierarchy and relationship should be studied much more carefully. The Committee should therefore express general approval of the framework but draw attention to the matters raised, including the need to clarify the relationship between the Committee against Torture and the subcommittee.

21. Mr. BURNS agreed that there could be no question of utilizing the optional protocol as a means of amending the Convention. The problem was a functional one which it was for the drafters to solve.

22. Mr. EL-IBRASHI said he could agree with Mr. Lorenzo. If, however, the problem arose from the text of a particular article, the Committee should indicate to the drafters where it lay.

23. The CHAIRMAN said he had some hesitation about Mr. Lorenzo's observations. First, in some places, such as in the text of article 15, the relationship between the Committee and the subcommittee was spelt out precisely; secondly, if the Committee voiced its observations only in general terms, it would undoubtedly be asked for a more detailed opinion, which he was not sure the Committee was best qualified to provide. If there were no further comments, he would take it that the Committee wished to draw attention to the problem of postponement raised by the text of article 8, mentioning also the concern felt about the relationship between the Committee and the subcommittee.

24. It was so agreed.

25. Mr. EL-IBRASHI, referring to article 9, paragraph 1, reiterated his earlier observations to the effect that the word "may" in the second sentence was not strong enough, and that if, even after consultation between the subcommittee and a regional organ, both bodies carried out visits, there should be some understanding about coordination, including a provision that the subcommittee should receive a report from the regional organ.

26. Mr. SORENSEN said that for the present there was only one relevant regional body - the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, established by the Council of Europe.

27. Article 9 of the draft optional protocol stipulated that "only in exceptional cases, when required by important circumstances" could the subcommittee send its own mission to a State party. If the scope of the article was widened, the European countries would not accede to the optional protocol since they would have nothing to gain from it. Moreover, the word "may" in the next sentence had been well chosen and should not be changed to "shall". It was not in order for a United Nations body to tell a Council of Europe body that it must report to it. It was important to establish a good relationship from the outset between the subcommittee and the European Committee, and that would not be achieved by changing the present wording.

28. Mr. BURNS disagreed with Mr. Sorensen on the last point. Retaining the word "may" would create more difficulties than a requirement to consult.

29. Mr. EL-IBRASHI observed that a misunderstanding might have arisen about the obligation, which was addressed to the subcommittee and not to some other body. It was quite true that a body belonging to another organization could not be forced to consult with the subcommittee.

30. Even according to Mr. Sorensen, however, there was a contradiction between the latitude of the clause "the Sub-Committee shall only in exceptional cases, when required by important circumstances, send its own mission to such a State Party" and the next sentence, which began "It may, however, consult with the organs established under such regional conventions with a view to coordinating activities". There should be an obligation to consult as well.

31. The CHAIRMAN considered that the subcommittee should be obliged to consult with regional organs, but had doubts about Mr. El-Ibrashi's suggestion that the regional organs should be asked to report to the subcommittee since the Committee could not give orders to an organ governed by another Convention.

32. Mr. EL-IBRASHI said that the subcommittee must at least be able to request a report from the regional organ, although it could not of course oblige it to produce one.

33. The CHAIRMAN said that that point was difficult to express in a convention but might be included in a commentary.

34. Mr. SORENSEN said that he would agree to replacing the word "may" by "shall" but was opposed to trying to make regional organs communicate their reports to the subcommittee and thus breaching confidentiality. The rest of the text should therefore remain unchanged.

35. Mr. BURNS thought it quite unrealistic to believe that regional organs would cooperate with the Committee by allowing a member of the subcommittee to participate as an observer in missions carried out under a regional convention since confidentiality would thus be breached. However, he had no solution to the problem, which should merely be flagged for the attention of the Economic and Social Council.

36. Mr. EL-IBRASHI said that just as there was cooperation between the United Nations and the OAU, the OAS and other regional organizations, there should be cooperation between a United Nations body dealing with torture and regional organs engaged on the same task. The idea of such cooperation should be included in the optional protocol so as to avoid duplication. He did not think that the question of confidentiality was overriding.

37. Mr. SORENSEN pointed out that confidentiality was taken extremely seriously by the European Committee, whose members were not even allowed to take certain reports out of the meeting room. The European countries believed that that Committee was working very well and there would be no need for them to accede to the optional protocol, thereby taking on further financial commitments, if that would create problems for them. The European Committee was already expensive to run.

38. Mr. LORENZO agreed with Mr. El-Ibrashi but did not think that his views were irreconcilable with those of Mr. Sorensen. There had been fruitful cooperation between the United Nations and regional organizations, whose work was complementary. The principle of cooperation between the subcommittee and regional organs should be agreed and the details left to the Commission on Human Rights or the General Assembly.

39. Mr. EL-IBRASHI said that if the subcommittee made a visit to a European country, it would certainly communicate its findings to the European Committee if that body decided to visit the same country. The latter Committee might thus be persuaded of the advantage of exchanging information; it should not be assumed that it would consider itself self-sufficient. Moreover, it would be useful to have the structure proposed since other regional organs would probably be established in the future.

40. Mr. BEN AMMAR suggested that the Committee should seek a more general wording to the effect that the subcommittee should cooperate with regional organs in an appropriate manner, compatible with the terms of reference of such organs, including the requirement to maintain confidentiality.

41. Mr. MIKHAILOV agreed with Mr. El-Ibrashi that the activities of regional organs needed to be properly coordinated with those of the subcommittee in order to avoid overlap. He did not believe that the confidentiality requirement would impede such cooperation. It might be possible to exclude from the optional protocol countries that had already ratified a regional convention and also to suggest that other regions should adopt similar conventions against torture. However, further careful consideration was needed before the Committee could take a decision on what was a very complex issue.

42. The CHAIRMAN, summing up the discussions thus far, said that all members of the Committee seemed to agree that the words "It may, however, consult ..." should be replaced by the words "It shall, however, consult ..." in article 9, paragraph 1, of the draft optional protocol. As for the remainder of the paragraph, the intention was to institute the closest possible coordination of activities, involving the future subcommittee, the regional organ and the State concerned. The protocol would be binding on the subcommittee and the State party, but not on the regional organ, which could be persuaded - but not compelled - to participate in such coordination. While it might be amended along the lines proposed by Mr. Ben Ammar, the text as currently worded seemed to him to leave the possibilities for coordination sufficiently open. Indeed, it went further, by envisaging the possibility of a member of the subcommittee participating in missions carried out under the regional conventions. It was not certain that the regional organ would accept such a proposal, but the general wording provided for the fullest possible coordination acceptable to that organ. All members' concerns were thus covered. In any case, no formal decision was to be taken at the present stage: the Committee had merely to express an opinion.

43. Mr. KHITRIN said that he had no difficulty in endorsing the Chairman's observations.

44. Mr. EL-IBRASHI said that his concern was that there should be a clearly delineated system for interchange of ideas and information between the subcommittee and the organs established under other conventions, so as to avoid duplication. Furthermore, the protocol must address the problem of confidentiality.

45. Mr. BURNS suggested that a solution might be for the Committee to express its approval of the existing wording, while pointing out the desirability of also incorporating more universally exhortatory language into the text.

46. The CHAIRMAN suggested that Mr. El-Ibrashi's concern regarding the desirability of instituting the fullest possible cooperation between the subcommittee and regional organs could be reflected in the Committee's opinion; the recipients of that opinion could then reconsider the question with a view to finding a better wording than the present text. For the time being, the Committee itself was not in a position to agree on that wording.

47. Mr. LORENZO confirmed that he fully supported the Chairman's summary of the situation.

48. The CHAIRMAN said that, according to his latest information, it was possible that the working group appointed to deal with the question might meet as early as October 1992, before the Committee's next session. The Committee should thus deliver its opinion at the current session. His impression was that the opinion should be incorporated into the report for the current session; both the report and the opinion contained therein could then be adopted concurrently.

49. Mr. BURNS, speaking in his capacity as General Rapporteur, confirmed that, since the Committee's opinion had been solicited, it should be reflected in the report. The opinion should be transmitted forthwith to the competent subgroup of the Economic and Social Council, which would in due course forward it to the working group.

The meeting rose at 5 p.m.